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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,818	07/03/2003	Gisela Greif	AH / Le A 33 017D1	6884
35968	7590	05/14/2004	EXAMINER	
JEFFREY M. GREENMAN BAYER HEALTHCARE LLC 400 MORGAN LANE WEST HAVEN, CT 06516			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/613,818	Applicant(s) GREIF ET AL.	
	Examiner Neil Levy	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/2/84
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 8-12 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's election with traverse of Group I, species of added active 2 Maduramidn, and Benzimidazole of claim 12, which depends on 11, thus, the benzimidazole defined at claim 11 in Paper No. 2/9/04 is acknowledged. The traversal is on the ground(s) that applicant argued no burden exists because the benzimidazole were searched in parent. This is not found persuasive because however, that is not true; these would be a burden, as this examiner has not searched the parent compounds; substituted phenyl could be anything, and could constitute patentably distinct inventions.

The requirement is still deemed proper and is therefore made FINAL.

The following deficiencies are noted: no abstract; no referral to parent; no foreign application, certified copy.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Imidazol N has only 2 bonds.

Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over O, Doherty-5331003 in view of Clegg et al 3271249 and Assmann et al 6034116.

O, Doherty (col.2 lines 19-28) teach combination of halogenated benzimidazolines, with polyethers antibiotics monensin (col.6, lines 24-43) Maduramicin, Salinomycin are effective to treat coccidiosis. However, the specific imidazole as instantly claimed was not mentioned.

Clegg also shows benzimidazolines to be effective coccidiostats, with emphasis on halogenated substituents (col.1, 2).

Assman does show the instant (col.3, 4, formula 1) benzimidazolines, with polyether antibiotics, (col.2) also effective as coccidiostats.

All the benzimidazolines are effective coccidiostats; the specific substituent groups not shown other than the halogenated sites, as of significance in determining coccidiostatic action.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize an anticoccidial composition to use one of O' Doherty with benzimidazoline of choice, as shown in the secondary references to be effective regardless of particular benzimidazolines. Combination with Maduramicin and other polyether antibiotics is also taught by O' Doherty and Assman to provide acceptable growth, without and bacterial contamination. O' Doherty teaches one having ordinary skill in the art would be motivated to perform this modification in order to have healthy fowl.

It has not clearly established by objective showing of some unobvious and/or unexpected results that the administration of the particular form of active, carrier, or the particular adjuvant antimicrobial provides any greater level of prior art expectation as claimed. Further, no criticality as to the ingredient actives concentrations, ratios or application has been shown by applicant.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredients to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on T-F from 7:00a.m to 5:30p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/tgd

May 4, 2004

A handwritten signature in black ink, appearing to read "Neil S. Levy".

NEIL S. LEVY
PRIMARY EXAMINER